

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: O'Connell Analyst: Kristina North Bill Number: SB 2080

Related Bills: See previous analyses Telephone: 845-6978 Amended Date: 5/26/98

Attorney: Doug Bramhall

Sponsor:

**SUBJECT:** 1998 California Land & Water Conservation Act/Qualified Contributions Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 20, 1998, and amended April 22, 1998.

FURTHER AMENDMENTS NECESSARY.

BOARD POSITION CHANGED TO NO POSITION at its 5/28/98 meeting.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED FEBRUARY 20, 1998, AND AMENDED APRIL 22, 1998, STILL APPLIES.

OTHER - See comments below.

### SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&TCL), this bill would allow a tax credit to taxpayers who contribute real property to the state, approved local governments, or approved nonprofit organizations designated by the state or local government. The amount of tax credit could not exceed 55% of the fair market value (FMV) of the qualified contribution.

This analysis addresses the provisions of the bill that pertain to the tax incentives.

### SUMMARY OF AMENDMENT

The May 26, 1998, amendment declares that the Franchise Tax Board (FTB) cannot issue an opinion that a contribution qualifies as a charitable contribution pursuant to the Internal Revenue Code (IRC) unless it has received a formal ruling from the Internal Revenue Service (IRS) or a copy of a formal ruling issued by the IRS to a California taxpayer that the entire value of a contribution of qualified property could be deducted as a charitable contribution pursuant to the IRC. Further, upon taxpayer request, the FTB would be required to assist the taxpayer in the preparation of a ruling request from the IRS.

The May 26, 1998, amendment requires that the percentage on which the credit is based be determined by the Secretary of the Resources Agency, after negotiations with the taxpayer, not to exceed 55%.

The May 26, 1998, amendment makes other technical changes to the PRC that do not directly impact this department or have an effect on state income tax revenue.

Board Position:

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<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Department/Legislative Director

Date

Johnnie Lou Rosas

6/19/98

The May 26, 1998, amendment declares that this bill would become operative only if Senate Bill 1771 of the 1997/98 regular session is enacted and becomes effective on or before January 1, 1999.

Policy, implementation and technical considerations that still apply are restated below. The potential additional departmental costs are stated below. Except for the discussion of amendments above and the Board's position, the department's analyses of the bill as introduced February 20, 1998, and as amended April 22, 1998, still apply.

### **Policy Considerations**

This bill does not include a sunset date to allow the Legislature to review the effectiveness of the credit.

This bill would provide a credit for donating land and/or water rights equal to as much as 55% of the value of the property, making a land contribution potentially six to eight times more valuable than any other kind of donation. Additionally, in combination with the federal deduction for a charitable contribution, this credit could provide some taxpayers tax benefits of almost 95% of the value of the donated land or water rights.

A "related party" could receive the full credit amount without any FMV reduction for property interests or other considerations received in exchange for the contributed party. For example: Partnership J&S, equally owned by Joe and Sue who are otherwise unrelated, makes a contribution of property that is qualified for this credit. As partners of Partnership J&S, Joe and Sue each receive a 50% pass-through credit. Joe independently operates a fruit stand on the contributed property and retains a permanent easement to continue operating his fruit stand. While Joe has received a property interest in the contributed property, he is not the contributing taxpayer (Partnership JS is) and would not be required to reduce his pass-through credit amount by the FMV of the permanent easement on the contributed property. In the extreme, a partnership could be created for the sole purpose of avoiding the credit reduction.

### **Implementation Consideration**

This bill provides that the Secretary would be responsible for accepting and approving applications for contributions qualifying for the credit and requires that the Secretary annually provide a listing to the FTB containing the names, taxpayer identification numbers, donated property description and the total credit amount approved for each donor. However, it should be specified that, in the event the donor is a partnership or S corporation, each partner or shareholder's taxpayer identification number also should be included in the annual listing.

### **Technical Considerations**

Under both PITL and B&TCL, this bill provides that the FMV of any qualified contribution "approved for acceptance under this section or Section ..." is to be passed through to the partners or shareholders in accordance with their interest in the pass-through entity as of the date of the qualified contribution. However, the qualified contribution is not accepted under the PITL or B&CTL by the Franchise Tax Board, but under the PRC by the Secretary of the Resources Agency.

In the case of a pass-through entity, this bill specifies how the qualified percentage would be determined by each partner or shareholder. This language is not necessary since the standard division of credit language would have the same outcome.

Amendments 1 and 2 are provided to resolve these technical concerns.

#### **Departmental Costs**

In addition to previously stated potential costs, it is not anticipated that additional staff positions would be needed to address the requirement that, upon taxpayer request, the FTB assist taxpayers in completing a request from IRS for a formal ruling on this issue. However, should the level of requests increase, additional staff may be required.

#### **BOARD POSITION**

No position.

At its May 28, 1998, meeting the Franchise Tax Board considered this bill but took no position. Controller Kathleen Connell was neutral, Member Dean Andal was in support, and the representative from the Department of Finance was absent.